

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

**DERRICK JONES, JEROME)
JONES DARNELL RUSAN, and)
MARREL WITHERS,)**

Plaintiffs,)

vs.)

Case No. 4:21-cv-600

CITY OF ST. LOUIS, *et al.*,)

Defendants.)

DEFENDANTS' STATEMENT OF UNCONTROVERTED MATERIAL FACTS

COME NOW Defendants, by and through undersigned counsel, and for their Statement of Uncontroverted Material Facts states the following:

1. Nurse Kristina Davis directed both Jones and his cellmate in isolation. Lt. Richards directed Jones to enter his cell for purposes of COVID isolation. Exh. A, Deposition of Sherry Richards (hereinafter "Richards"), September 7, 2022, 124:25, 125:1-25, 126:1-25, 127:1-19.

2. Jones refused this directive and multiple further directives from Lt. Richards. Lt. Richards left the housing unit and returned with a cannister of pepper spray. Exh. A, Richards, 124:25, 125:1-25, 126:1-25, 127:1-19.

3. Upon returning, Lt. Richards gave multiple further directives, along with Corrections Officer Conrad Eastling (hereinafter "CO Eastling"), to Jones to enter his cell. Exh. B, December

14, 2020, 5:17:49 p.m. video of Derrick Jones from the City of St. Louis City Justice Center (hereinafter “CJC Jones video”), time index 00:01-00:52.¹

4. At one point Jones crosses the red line into the “officer only” section of the common area near the control podium and behind CO Eastling. Exh. B, CJC Jones video, 00:52-00:56.

5 Lt. Richards calls for additional corrections officers while she continued to try and persuade Jones to comply. Jones continued to refuse. Exh. B, CJC Jones video, 00:56-02:54.

6. Ultimately, Lt. Richards applies one quick burst of pepper spray to Jones. Exh. B, CJC Jones video, 02:54.

7. Where upon Jones attacks Lt. Richards and pulls her to the ground. Exh. B, CJC Jones video, 02:54-03:17.

8. Multiple corrections officers are necessary to subdue Jones, he is handcuffed, and is taken to the medical department for decontamination. Exh. B, CJC Jones video, 03:17-04:09.

9. Section VIII(A)(1) of the Inmate Handbook states: “Inmates will obey and follow all instructions of the Housing Unit/Dormitory Officer.” Exh. C, City-002246.

10. Section VIII(A)(4) of the Inmate Handbook instructs:

The “out of bounds” area is marked by a red line in housing units The Housing Unit Officer’s workstation is always “out of bounds”. Do not cross over a red line, lean on the officers’ workstation, or remove anything from the desk at any time. Do not approach the Officer’s station unless you have permission.

Exh. D, Inmate Handbook, 2019, page 19.

¹ Copies of the video recordings referenced as exhibits throughout shall be provided to the Court via thumb drive hand-delivered to the Court.

11. Jones knew that crossing the red line and going behind Officer Eastling was a violation of CJC rules. Exh. E, Deposition of Derrick Jones (hereinafter “Derrick Jones”), January 12, 2023, 31:22-25; 32:1-9, 17-19; 44:1-7.

12. During Derrick Jones’ refusal to comply with staff directives other inmates can be seen also refusing to enter their cells in order to watch the incident between Jones and CJC staff. Exh. B, CJC Jones video, 00:01-04:09.

13. Jones was aware of the disturbance he was causing on December 14, 2020. Exh. E, Derrick Jones, 26:5-11.

14. On December 21, 2020 the nation was still in the grip of the COVID-19 pandemic. Exh. F, Proclamation of Mayor Lyda Krewson of March 13, 2020.

15. Jones continued his attack Lt. Richards and resist the officers attempts to subdue him. Exh. B, CJC Jones video, 02:54-04:09.

16. As the video indicates, Lt. Fowles, one of the officer who responded to Lt. Richards’ call for help, applied a one second burst of pepper spray to Jones. Exh. B, CJC Jones video, 03:28.

17. While housed in a holding cell Jones continued to act aggressively and began kicking the cell door violently. Lt. Fowlkes directed Jones to stop kicking the door, but he refused. Lt. Fowlkes applied a short burst of pepper spray to Jones and he ceased kicking the door. Exh. G, CITY_000344, Part C, Use of Force Report; Exh. H, Deposition of Javan Fowlkes (hereinafter “Fowlkes”), June 3, 2022, 181:1-14.

18. Lt. Fowlkes approached the visiting booth and asked Jones again if was willing to cooperate. He refused and Lt. Fowlkes applied one short burst of pepper spray to Jones

whereupon he complied. Exh. H, Fowlkes, 2-16; Exh. I, CITY_000355, Part C, Use of Force Report.

19. A riot had just occurred at the CJC on February 6, 2021. Exh. J, United Press International, Sommer Brokaw, February 6, 2021.

20. On December 19, 2020, Plaintiff, Darnell Rusan (hereinafter “Rusan”) was being held at the CJC in Housing Unit 4 Alpha as a pretrial detainee. Exh. K, CITY_000373, Incident Detail Section, IJMS Incident Report.

21. Corrections Officer Michelle Lewis called Lt. Aisha Turner to the unit because she believed that detainees had been smoking in the unit due to the smell of smoke. Lt. Turner responded to the unit in response to Officer Lewis’ call. Lt. Turner brought with her a large can of pepper spray. Exh. L, Deposition of Aisha Turner (hereinafter “Turner”), June 29, 2022, 198:15-25, 199:16-24.

22. When Lt. Turner arrived and began talking about detainee smoking on the unit, Rusan overheard Officer Lewis and Lt. Turner discussing detainee smoking and became angry. Rusan repeatedly interjected himself into Lt. Turner and Officer Lewis conversation regarding the smoking. At the time, Rusan was sitting at the telephone bank nearest to the officer’s podium. Lt. Turner believed that Rusan was trying distract her and Officer Lewis from the smoke. Lt. Turner also believed Rusan to be under the influence of whatever drug had generated the smoke in the housing unit. Exh. L, Turner, 206:23-25, 207:3-18; Exh. M, City_002249, CJC video of Darnell Rusan (hereinafter “CJC Rusan video”), Saturday, December 19, 2020 8:55.14 a.m., time index 00:01

23. Lt. Turner also felt unsafe at the time due to Rusan continue to argue with her and Officer Lewis. Exh. L, Turner, 210:14-22.

24. Lt. Turner told Rusan to use a telephone farther away. Exh. L, Turner, 209:9-16.

25. Rusan continued to argue with Lt. Turner and Officer Lewis and cursing at them. Rusan then began threatening Lt. Turner with physical violence and that he was going “call his people.” Exh. L, Turner, 211:2-16.

26. Lt. Turner, in an attempt to deescalate Rusan, began to leave. At that point Rusan began calling Lt. Turner and Officer Lewis names and continued cursing at them. Lt. Turner walked back to Rusan and repeated instructed him to “step in” to his cell to be locked down as can be seen in the video of the incident. Exh. L, Turner, 211:2-16, 212:9-15. Exh. M, CJC Rusan video, 00.55-01.54.

27. Rusan refused to go to his cell. Lt. Turner then sprayed Rusan with pepper spray. Rusan immediately attacked Lt. Turner with a chair. Exh. M, CJC Rusan video, 01.52-01.54.

28. When Officer Lewis came to Lt. Turner’s aid and sprayed Rusan as well, Rusan attacked her with a chair. Rusan continued to refuse to lock down in his cell. Officer Lewis continued to attempt to get Rusan in his cell until Rusan attacked her and knocked her to the ground. Exh. M, CJC Rusan video, 01.54-02.09.

29. Throughout this entire time six other detainees were present and near to both Lt. Turner and Officer Lewis. Exh. M, 00.01-04.59.

30. On February 3, 2021, CJC staff were conducting a “shake down” of Housing Unit 5 Bravo looking for contraband. Rusan was assigned to said housing unit and temporarily held in a visiting booth during the search. While in the visiting booth Rusan was personally searched as well. A corrections officer gave Rusan a directive to submit to a strip search. Rusan removed his clothes, but refused to cooperate further. The corrections officer contacted Lt. Fowlkes and reported Rusan’s refusal to cooperate. Lt. Fowlkes again directed Rusan to bend over and spread

his buttocks. Rusan again refused. At which point Lt. Fowlkes applied one short burst of pepper spray. Rusan then complied with the aforesaid directive. Exh. N, CITY_000359, Summary Report, Use Of Force Report; Exh. H, Fowlkes, 198:19-25, 199:1-25, 200:1-6.

31. On January 6, 2022, Marrell Withers (hereinafter “Withers”) was confined in the CJC having been brought there by writ from another institution. Exh. O, Deposition of Freddie Wills (hereinafter “Wills”), July 29, 2022, 104:14-17.

32. There was concern at the CJC that Withers had COVID-19 at the time. Exh. O, Wills, 104:22-25.

33. During Withers’ intake process the medical staff so they directed that Withers go into the isolation unit. Exh. O, Wills, 105:1-4.

34. Capt. Wills and Corrections Officer Doug Jones directed Withers to go into an isolation cell and he refused. Withers was handcuffed at the time. Withers adamantly refused to enter the cell and told Capt. Wills and Officer Jones that they would “have to spray” him twice. Exh. P, City_004063, Thursday, January 06, 2022 5:08.12 p.m. CJC video of Marrell Withers (hereinafter “CJC video Withers”), time index 08.09-09.29.

35. Withers can be seen pacing in an agitated manner. Exh. P, CJC video Withers, 00.01-01.35.

36. Withers then sits down and begins arguing with Officer Jones and swearing at him in an angry tone. Withers continues to act in an agitated and argumentative manner then threatens to kick the computer monitor at the officer’s podium and throw it against the wall. Exh. P, CJC video Withers, 06:45-07.10.

37. Officer Jones applies one short burst of pepper spray to Withers. Withers declares again he is not going in the cell and again says repeatedly that Officer Jones will have to spray

him. 08:52, 09:00. Officer Jones then applies a second short burst of pepper spray. Capt. Wills asks Withers if he will go in the cell and he again refuses. Capt. Wills then directs Officer Jones and other corrections officer to take Withers to the medical unit. Exh. P, CJC video Withers, 08:50:-09:09.

38. Exh. Q, City_004354-004359, City of St. Louis Department of Public Safety / Division of Corrections, Policy 3.1.21, Use Of Force.

39. In this report Major Tanya Harry who reviewed the incident as part of the Use Of Force review process *disagreed* that the use of pepper spray was appropriate in the circumstance. Exh. R, City_004057, Part D, January 6, 2022 Use Of Force Report.

40. Stopped up toilets or sinks or broken sprinkler heads necessitate turning off water to prevent flooding and water damage. Exh. S, Deposition of Bruce Borders (hereinafter “Borders”), November 14, 2022, 139:23-25, 140:1, 9-11.

41. Q: So, before that riot, your water had never been turned off before?

A. No, I was on like the – the third floor before and the same guy that maced me was the one that sent me to the fourth floor and the fifth floor.

Exh. T, Deposition of Jerome Jones, October 28, 2022, 13:6-10.

42. Q: Okay. So, you were in 4D for less than a month before the incident that we’re here about?

A: Yes.

Q. Okay. And while you were in 4C, before this incident that December ---- on December 14, 2020, when was the first time your water was turned off?

A: In 4C?

Q. In 4C.

A. The water wasn’t turned off.

Exh. E, Derrick Jones, 18:18-25, 19:1.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 26, 2023 the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon all attorneys of record.

/s/ Lawrence Pratt